

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
AT&T Services, Inc. Petition for	)	WC Docket No. 16-363
Forbearance from Enforcement of	)	
Certain Rules for Switched Access Services	)	
and Toll-Free Database Dip Charges	)	

**REPLY COMMENTS OF OMNITEL COMMUNICATIONS, INC.**

Omnitel Communications, Inc. (“Omnitel”), through its undersigned counsel and pursuant to the Federal Communications Commission’s (“Commission’s”) Public Notice,<sup>1</sup> hereby replies to the comments on the above-referenced petition for forbearance filed by AT&T Services, Inc. (“AT&T”).<sup>2</sup> As discussed herein, the initial comments submitted to the Commission overwhelmingly oppose AT&T’s request that the Commission impose a mandatory detariffing regime against any local exchange carriers (“LECs”) whose access services satisfy the Commission’s definition of “access stimulation.”<sup>3</sup> The comments highlight numerous shortcomings in the *Petition* and present compelling arguments why it should be denied. Moreover, Verizon, the sole supporter of the *Petition*, fails to address these shortcomings or present any additional basis for granting the *Petition*. For these reasons, and for the reasons given in Omnitel’s initial opposition,<sup>4</sup> the *Petition* should be denied.

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<sup>1</sup> *Pleading Cycle Established for Comments on AT&T’s Petition for Forbearance from Certain Tariffing Rules*, WC Docket No. 16-363, Public Notice, DA 16-1239, (released Nov. 2, 2016).

<sup>2</sup> *Petition of AT&T Services, Inc. for Forbearance under 47 U.S.C. § 160(c)*, WC Docket No. 16-363 (filed Sept. 30, 2016) (“*Petition*”).

<sup>3</sup> *See* 47 C.F.R. §61.3(bbb).

<sup>4</sup> *See* Opposition of Omnitel Communications, Inc., WC Docket No. 16-363 (filed Dec. 2, 2016) (“Omnitel Opposition”).

# **I. THE INITIAL COMMENTS IN RESPONSE TO THE PETITION PRESENT COMPELLING ARGUMENTS TO DENY AT&T’S REQUEST**

The commenters in this proceeding almost unanimously oppose the *Petition*, and provide numerous compelling reasons to deny AT&T’s forbearance request. First, the broad relief AT&T seeks in its *Petition*, if it is appropriate at all, should not be addressed in the context of a forbearance proceeding but more comprehensively as a part of further access reform.<sup>5</sup> Commenters, like Omnitel, note that the Commission has a pending rulemaking to consider whether to modify further its rules concerning charges for rate elements such as interstate originating access and tandem switching and transport.<sup>6</sup> NTCA elaborates that “the issue presented by AT&T is part of a larger regulatory structure, and resolution of this singular issue is linked inextricably to a broader range of measures that, as the Commission itself has previously determined, are best addressed in a comprehensive manner.”<sup>7</sup> Commenters rightly criticize the *Petition* as an inappropriate vehicle “to jump out ahead of the Commission on intercarrier compensation reform by obtaining a quick, self-serving fix on one intercarrier compensation issue.”<sup>8</sup>

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<sup>5</sup> As NTCA noted, “the use of a broadly effective forbearance outcome should be rejected in favor of those measures that would address discrete issues of concern to AT&T in a more focused manner.” Comments of NTCA—The Rural Broadband Association, WC Docket No. 16-363, 2 (filed Dec. 2, 2016) (“NTCA Comments”).

<sup>6</sup> See, e.g., O1 Communications, Inc.’s Opposition to Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. § 160(c), WC Docket No. 16-363, 5 (filed Dec. 2, 2016) (“O1 Opposition”) (“Rather than act in piecemeal fashion and resolve a small subset of the numerous legal and factual issues in this proceeding in the context of one market participant’s priority list, the Commission should address these issues in the far reaching rulemaking aimed to consider the issues in the context of overall intercarrier compensation reform.”); accord Omnitel Opposition at 4. See also *In re Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, ¶¶ 1296-1325 (2011) (“*USF/ICC Transformation Order*”).

<sup>7</sup> NTCA Comments at 4.

<sup>8</sup> *Id.* at 6; see also Consolidated Communications Companies and West Telecom Services, LLC’s Motion for Summary Denial of and Opposition to AT&T’s Petition, WC Docket No. 16-363, 6 (filed Dec. 2, 2016) (“denial is especially appropriate because the Petition

Second, as Omnitel noted in its initial opposition, the *Petition* fails to provide an evidentiary basis to satisfy the requisite criteria for forbearance.<sup>9</sup> Peerless Network also commented on the lack of evidence in the *Petition*, and pointed out that AT&T’s extensive reliance on the five-year old *USF/ICC Transformation Order* as the “factual basis for its request” is not sufficient under Section 10 of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 160, to support its request.<sup>10</sup> The Carrier Coalition<sup>11</sup> explains that “[i]n several instances, the *Petition* makes factual assertions without any citation. Where citations are provided, they almost all refer to the *USF/ICC Transformation Order*, in which the Commission decided *not* to implement mandatory detariffing reforms of the type proposed by the AT&T *Petition*.”<sup>12</sup> NTCA explained that the *Petition* “does not provide evidence sufficient to support a

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improperly seeks to hijack significant remaining issues already being addressed in the Commission’s ongoing [Connect America Fund] proceeding and its implementation of the *USF/ICC Transformation Order*.”); Comments of the Nebraska Rural Independent Companies, WC Docket No. 16-363, 3 (filed Dec. 2, 2016) (“AT&T’s effort to pre-determine the outcomes of issues already pending before the Commission should be rejected.”).

<sup>9</sup> See Omnitel Opposition at 4-10. See also generally James Valley Cooperative Telephone Company, Northern Valley Communications, LLC, and Great Lakes Communication Corporation’s Joint Motion for Summary Denial of and Opposition to Petition of AT&T Services, Inc. for Forbearance Pursuant to 47 U.S.C. § 160(c), WC Docket No. 16-363 (filed Dec. 2, 2016); Comments of Inteliquent, Inc., Bandwidth.com, Inc., and Onvoy, LLC, WC Docket No. 16-363 (filed Dec. 2, 2016); O1 Opposition.

<sup>10</sup> See Peerless Network, Inc.’s Opposition to AT&T Services, Inc.’s Petition for Forbearance Under 47 U.S.C. § 160(c), WC Docket No. 16-363, 5, 11-13 (filed Dec. 2, 2016) (“Peerless Opposition”). Peerless goes on to note that “AT&T references the FCC’s [2011] factual findings that access stimulation is bad for competition . . . But there is no discussion here or in the CAF Order about the impact of access stimulation on the tandem service market.” *Id.* at 4. See also Motion for Summary Denial and Opposition to AT&T’s Petition of Birch Communications, Inc.; BTC, Inc.; Cbeyond Communications, LLC; Goldfield Access Network, LC; Kansas Fiber Network, LLC; Louisa Communications; Nex-Tech, Inc.; and Peninsula Fiber Network, LLC, WC Docket No. 16-363, 17 (filed Dec. 2, 2016) (“Carrier Coalition Opposition”). *Accord*, Omnitel Opposition at 8-9.

<sup>11</sup> The members of the Carrier Coalition are Birch Communications, Inc., BTC, Inc., Cbeyond Communications, LLC, Goldfield Access Network, LC, Kansas Fiber Network, LLC, Louisa Communications, Nex-Tech, Inc., and Peninsula Fiber Network, LLC.

<sup>12</sup> Carrier Coalition Opposition at 3.

section 10 finding”<sup>13</sup> and more particularly that it offers “no evidentiary basis to support the proposition that access stimulation generally is inherently reflective of unlawful tandem switched and tandem-switched transport rates.”<sup>14</sup> Further, NTCA notes that the *Petition* does not “offer any guidance as to how the limited data presented therein can be verified. This begs the question as to whether the market trends generally described by AT&T as relating to tandem switch and tandem-switched transport are so pervasive as to justify forbearance, an especially drastic step in the face of a pending rulemaking.”<sup>15</sup>

Third, the record makes clear that the relief requested would not lead necessarily to reasonable rates. Peerless observed in its opposition that “unless AT&T would expect to exert its market dominance in the long distance market to extract discounted off-tariff rates from tandem providers, it’s not clear what rate benefit AT&T could achieve by detariffing tandem access rates.”<sup>16</sup> Moreover, as noted by the Carrier Coalition, “if the charges for tandem switching and tandem-switched transport services were subject to mandatory detariffing as proposed by AT&T, while the rest of the intercarrier compensation regime were left intact—which is exactly what the *Petition* proposes—IXCs would have no incentive to negotiate a reasonable rate....[and] [a]t the same time, tandem switching and transport providers would face tremendous uncertainties as to

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<sup>13</sup> NTCA Comments at 12.

<sup>14</sup> *Id.* at 10.

<sup>15</sup> *Id.* at 12. NTCA also highlights that “the *Petition* does not identify or enumerate the number of carriers that underlies” AT&T’s claims, and “[a]bsent that information, there is no way for the Commission or other parties to assess the necessity of or justification for forbearance as opposed to targeted tariff challenge or complaint processes with respect to the individual competitive firms that give rise to this concern.” *Id.* at 13.

<sup>16</sup> Peerless Opposition at 8. Peerless further pointed out that “AT&T has not proposed how any of these tandem providers would know if a LEC that has an end office subtending to the tandem is engaged in access stimulation. The FCC’s access stimulation rule requires a highly factual analysis to determine if a LEC is engaged in access stimulation.” *Id.* at 6.

whether they would get paid for services provided in the absence of an agreement.”<sup>17</sup> Such uncertainty that appropriate compensation would be paid “would harm the public interest by diminishing competition in the tandem and transport services market, thereby undermining the many public interest benefits that such services provide, such as improved network diversity, network security, and disaster recovery.”<sup>18</sup>

Finally, the grounds for the relief the *Petition* seeks, while nebulously supported, appears to involve a small set of allegedly bad actors.<sup>19</sup> Nevertheless, AT&T has asked the Commission to impose a sweeping forbearance that would apply even to those carriers not engaged in access stimulation. NCTA correctly pointed out that “[AT&T’s] proposed remedy could eliminate originating and terminating access charges assessed by unaffiliated voice providers handling the non-arbitrated end of a call by a traffic pumping LEC. There is no defensible basis for penalizing voice providers that are not involved in the traffic stimulation schemes by depriving

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<sup>17</sup> Carrier Coalition Opposition at 21, 24. *See also* CenturyLink Opposition/Comments to AT&T Forbearance Petition, WC Docket No. 16-363, 5 (“CenturyLink Opposition”) (observing that “the relief requested in the AT&T Petition in the forbearance context would prohibit LECs from recovering the costs of those services from IXCs without creating an alternative cost-recovery mechanism.”). In its opposition to the *Petition*, CenturyLink also proposes that the Commission should “clarify that all tandem provider rates are subject to the CLEC benchmark rule and that it is unlawful for terminating carriers to refuse direct interconnection to IXCs.” CenturyLink Opposition at 2. Omnitel cautions, however, that this proposal would not be a clarification, but rather would require the adoption of rules in a separate, properly noticed rulemaking proceeding.

<sup>18</sup> Carrier Coalition Opposition at 30. CenturyLink also points out that “AT&T Petition’s requested relief will also impose significant new costs on tandem providers . . . . Current industry standard systems and processes for tandem switching and transport facilities do not have the capability of identifying and carving out for special treatment traffic that is bound for CLECs engaged in access stimulation. Thus, this capability would now have to be created – something that would impose significant costs on tandem providers.” CenturyLink Opposition at 5. *See also* NTCA Comments at 14-16; Comments of NCTA – The Internet and Television Association, WC Docket No. 16-363, 3 (filed Dec. 2, 2016) (“NCTA Comments”).

<sup>19</sup> *See Petition* at 14-15; Omnitel Opposition at 8-9.

them of the ability to assess lawful originating and terminating access charges.”<sup>20</sup> Several commenters astutely note that, rather than seeking forbearance to resolve this supposed issue, AT&T could pursue more tailored relief by submitting a Section 208 complaint<sup>21</sup> or seeking Commission review of tariffs that the company views as problematic.<sup>22</sup>

## **II. VERIZON FAILS TO PRESENT ANY ARGUMENTS OR EVIDENCE TO JUSTIFY GRANTING THE PETITION**

The sole commenter that supports the *Petition* is Verizon.<sup>23</sup> After acknowledging that there are other ways to address the relief AT&T seeks outside of Section 10 forbearance, Verizon claims that “AT&T’s proposal to detariff tandem switching and transport access charges for all calls to or from LECs engaged in access stimulation is a reasonable way to curb ... traffic pumping.”<sup>24</sup> However, Verizon fails to offer any further specific support of the *Petition* from its own experience or data. Verizon makes no specific attempt to shore up the *Petition*’s failure to show that the three prongs of Section 10’s forbearance criteria have been satisfied based on current circumstances.<sup>25</sup> Moreover, Verizon misinterprets the reforms undertaken by the Commission in the *2011 USF/ICC Transformation Order* to address access stimulation

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<sup>20</sup> NCTA Comments at 3.

<sup>21</sup> See Carrier Coalition Opposition at 5 (“At best, the *Petition* merely describes a few encounters that, if truly problematic, could be addressed on a case-by-case basis in a Section 208 complaint proceeding.”). See also Peerless Opposition, 3 (“AT&T’s *Petition* should be denied, and if AT&T has an issue with a mileage pumping tandem provider that serves an access stimulating end office LEC, then AT&T should bring the applicable enforcement action at the FCC, as it did in the *Great Lakes Comnet* case.”); NTCA Comments at 10-11. Accord Omnitel Opposition at 10.

<sup>22</sup> See NTCA Comments at 3 (“lawfully-filed tariffs are already subject to regulatory oversight, and entities such as AT&T that have concerns regarding tariffed charges can seek relief via existing dispute processes.”).

<sup>23</sup> See Comments of Verizon, WC Docket No. 16-363 (filed Dec. 2, 2016) (“Verizon Comments”).

<sup>24</sup> *Id.* at 5.

<sup>25</sup> See 47 U.S.C. § 160(a).

concerns.<sup>26</sup> Verizon’s comments, like the AT&T *Petition*, at best should be treated as no more than an *ex parte* submission in the pending rulemaking, and the *Petition* should be denied.<sup>27</sup>

Verizon sweepingly alleges that even after the *USF/ICC Transformation Order*, “traffic pumping remains a problem,” particularly for “originating access and tandem switching and transport that are not yet transitioning to bill-and-keep.”<sup>28</sup> However, like the *Petition*, Verizon offers no data or other persuasive evidence of a widespread problem. Instead, it generically alleges suspected behavior where numbers may be used by some unnamed actor to make multiple calls per day to a chat line but not actually participate in the discussion.<sup>29</sup> Verizon asserts that “many telephone numbers” engage in this behavior, but provides no quantitative evidence to support its claim as to how many, the number of minutes of access allegedly generated in this manner, or who is engaged in this behavior. Nor does Verizon go so far as to claim a cognizable percentage of all calls to chat lines or free conference calling platforms are generated in this way. The unquantified and unidentified situation presented by Verizon, or other isolated situations, assuming they exist, cannot justify the broad relief AT&T seeks.<sup>30</sup> Like the *Petition*, Verizon fails to support a case for global relief. As noted above, both AT&T and Verizon have the ability to bring complaints against suspected bad actors, whether before the Commission or in courts.

The assertions made in Verizon’s comments also suggest two key misinterpretations of the *USF/ICC Transformation Order*. First, Verizon states that “the Commission has not yet

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<sup>26</sup> *USF/ICC Transformation Order*, ¶¶ 656-701.

<sup>27</sup> *See* Omnitel Opposition at 4.

<sup>28</sup> Verizon Comments at 1.

<sup>29</sup> *Id.* at 4.

<sup>30</sup> *See* Omnitel Opposition at 9.

enforced its rules against the excessive transport switched-access charges that Centralized Equal Access providers like Iowa Network Services and South Dakota Network assess.”<sup>31</sup> However, no such rules exist to enforce. It would seem very odd, in any event, in a forbearance proceeding to ask the Commission to refrain from enforcing certain rules in response to a carrier’s complaints that the Commission has failed to enforce rules on the same subject. Verizon appears to recognize that the *USF/ICC Transformation Order* addressed “*terminating* switched-access charges,”<sup>32</sup> not tandem switched transport access charges, in other words that there are no rules from the *USF/ICC Transformation Order* for the Commission to enforce.

Second, Verizon erroneously posits that the intended effect of the *USF/ICC Transformation Order* was to “transition all rate elements to bill-and-keep.”<sup>33</sup> In reality, however, the *USF/ICC Transformation Order* only “specif[ied] the implementation of the transition for certain terminating access rates in the Order, [but] did not do the same for other rate elements,”<sup>34</sup> including those at issue in the *Petition*, on the basis that the Commission needed to supplement the record before it could “establish the proper transition and recovery mechanism for the remaining elements.”<sup>35</sup> Indeed, the Commission simultaneously initiated a further rulemaking to consider whether to modify further its rules concerning charges for interstate originating access and tandem switching and transport. This rulemaking remains pending and is the proper forum to consider relief in a comprehensive framework rather than decisions of a one-off fashion as the *Petition* requests. Omnitel therefore submits that both the

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<sup>31</sup> Verizon Comments at 4.

<sup>32</sup> *Id.* (emphasis added).

<sup>33</sup> *Id.* at 2.

<sup>34</sup> *USF/ICC Transformation Order*, ¶ 1297.

<sup>35</sup> *Id.*



*Petition* and Verizon’s comments should be treated, at best, as *ex parte* submissions in that proceeding, and AT&T’s forbearance request should be denied.

Finally, Verizon states that “[t]he Commission has established that a carrier can assess charges on another and establish a duty to pay those charges only pursuant to Commission rule, tariff, or contract.”<sup>36</sup> Moreover, the Commission has previously recognized that a carrier may be entitled to reasonable compensation when performing functions for another carrier whose traffic the former carrier handles.<sup>37</sup> A forbearance decision here, were it to result in mandatory detariffing – which Omnitel submits should not be the result – would fail to establish what compensation will apply in the absence of tariffs and leave a gaping hole in the ability of affected providers of tandem transport to recover for their services, contrary to the public interest in certainty regarding intercarrier compensation. This underscores why, in the public interest, these issues should be addressed comprehensively in a rulemaking, so that the Commission can consider whether and how to ensure there is a clear mechanism for making just and reasonable compensation available, whether that be a transition to bill-and-keep or otherwise.

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<sup>36</sup> Verizon Comments at 5 (*citing Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, Declaratory Ruling, 17 FCC Rcd 13192, ¶ 8 (2002) (“*Sprint PCS Order*”). However, the charges at issue in the *Sprint PCS Order* were subject to “mandatory detariffing,” which is not the case for LEC tandem switching and transport access charges at issue in the *Petition*.

<sup>37</sup> See, e.g., *Qwest Communications Corp. v. Farmers and Merchants Mutual Telephone Co.*, File No. EB-07-MD-001, Second Order on Reconsideration, 24 FCC Rcd 14801, n.96 (2009) (noting that a carrier may be entitled to some compensation for providing a non-tariffed service, depending on the totality of the circumstances).

### III. CONCLUSION

For the foregoing reasons, as well as those in Omnitel's initial opposition, the Commission should deny the *Petition* with respect to charges for tandem switching and transport access charges.

Respectfully submitted,



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